88-182

No. 88-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

GENERAL ELECTRIC COMPANY,
Petitioner,

v.

UNITED STATES OF AMERICA

and

JOHN M. GRAVITT,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Of Counsel:
BENJAMIN W. HEINEMAN, JR.
Senior Vice President
and General Counsel
PHILIP A. LACOVARA
Vice President and
Senior Counsel for Litigation
and Legal Policy
GENERAL ELECTRIC COMPANY
3135 Easton Turnpike
Fairfield, CT 06431
(203) 373-3632

ERWIN N. GRISWOLD
Counsel of Record
STEPHEN J. BROGAN
TIMOTHY J. FINN
JONES, DAY, REAVIS
& POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939
Counsel for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Should the Court resolve the issue expressly reserved in *Carson v. American Brands, Inc.*, 450 U.S. 79, 83 n.7 (1981), whether an order refusing to approve a settlement agreement is appealable as a final collateral order under 28 U.S.C. § 1291?

2. Is an order preventing the United States from entering a settlement agreement and dismissing an action under the False Claims Act appealable as a final collateral order under 28 U.S.C. § 1291?

STATEMENT UNDER RULES 21.1(b) AND 28.1

The petitioner herein, the General Electric Company, is a publicly held company. A listing of the nonwholly-owned subsidiaries and affiliates of the General Electric Company is included in Appendix K at 49a to 54a. The petitioner was the defendant-appellant below. The plaintiff in this action, the United States, was also an appellant below.

The appellee below was John M. Gravitt, who was allowed to intervene in this action by the District Court under Federal Rule of Civil Procedure 24. Mr. Gravitt originally brought this action under the *qui tam* provisions of the False Claims Act on behalf of the United States, but the United States is now represented by the Department of Justice.

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Petitioner, General Electric Company, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on May 3, 1988.

OPINIONS BELOW

The unreported May 3, 1988 opinion of the Court of Appeals appears in Appendix A at 1a to 2a. The January 22, 1988 opinion of the United States District Court for the Southern District of Ohio is reported at 680 F. Supp. 1162, and is reproduced in Appendix B at 3a to 8a. The August 24, 1987 Report and Recom-

mended Decision of Honorable Robert A. Steinberg, United States Magistrate, is unreported and appears in Appendix C at 9a to 29a. Other opinions of the Court of Appeals and the District Court are also unreported and appear in Appendix D at 30a to 31a (opinion of February 7, 1986) and in Appendix E at 32a to 34a (opinion of January 9, 1986), Appendix F at 35a to 36a (opinion of February 27, 1986) and Appendix G at 37a (opinion of May 6, 1986), respectively.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals was entered on May 3, 1988. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1982).

STATUTES INVOLVED

1. 28 U.S.C. § 1291 (1982) provides, in pertinent part, that:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court.

2. The False Claims Act, prior to its amendment in 1986, provided, in pertinent part, that:

> [b](1) A person may bring a civil action for a violation of section 3729 of this title for the person and for the United States Government. The action shall be brought in the name of the Government. . . . An action may be dismissed only if the court and the Attorney General give written consent and their reasons for consenting.
>
> [b](3) If the Government proceeds with the action, the action is conducted only by the Government. The Government is not bound by an act of the person bringing the action.

31 U.S.C. §§ 3730(b)(1), (3) (1982).

Since its amendment in 1986, the False Claims Act provides, in pertinent part, that:

> [b](1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.
>
> [c][2](B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

31 U.S.C. §§ 3730(b)(1) and 3730(c)(2)(B) (Supp. IV 1986).

STATEMENT

This is a proceeding under the False Claims Act originally instituted by respondent Gravitt in the name of the United States against his former employer, petitioner General Electric Company ("GE"). App. C at 9a. In accordance with 31 U.S.C. §§ 3730(b)(2), (3) (1982), the United States Department of Justice assumed control of the case. App. C at 9a; App. I at 44a. After a lengthy investigation, the Department of Justice negotiated a settlement with GE. App. C at 10a; App. I at 44a to 47a. On December 13, 1985, counsel for the United States filed a stipulated dismissal of this action pursuant to the settlement agreement. App. J at 48a. Since that time the District Court has repeatedly denied its consent to this settlement and dismissal.[1] Both GE

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[1] At all relevant times, the court's consent has been required for dismissal of a False Claims Act case, at least if the action was being maintained by a private person. *See* 31 U.S.C. § 3730(b)(1) (1982); 31 U.S.C. § 3730(b)(1) (Supp. IV 1986). Under an amendment enacted after the settlement and dismissal were filed in this case, the Act provides for the court to determine whether

and the United States have unsuccessfully sought appellate review of the District Court's actions, first, under 28 U.S.C. § 1292(b) (1982) and then, after the latest order, under 28 U.S.C. §§ 1291, 1292(a)(1) (1982). GE now seeks review by this Court to determine whether the District Court's order refusing to approve the settlement and dismissal of this case, sought by both the United States and GE for over two and a half years, is appealable under 28 U.S.C. § 1291. The Court of Appeals for the Sixth Circuit determined that it is not.

Summary Of Facts And Proceedings Below

1. This case involves allegations of fraud arising out of labor vouchering practices in the small Development Manufacturing Operation ("DMO") shop at GE's Evendale, Ohio aircraft engine plant. App. C at 9a. In 1983, respondent John M. Gravitt, a DMO employee who had recently received notice of his layoff pursuant to an ongoing reduction-in-force at the plant, sent a letter to GE alleging that employees in his unit were mischarging labor time. GE immediately instituted an internal investigation and disclosed Mr. Gravitt's allegations to the Government. App. H at 41a to 42a.

In the summer of 1983, the Defense Contract Audit Agency ("DCAA") instituted its own investigation. App. H at 41a. The DCAA ultimately found that the practices complained of had resulted in no damage to the United States and that the GE employees involved did not intend to defraud the Government. *Id.* Rather, the purpose of the scheme was to dissuade GE from laying off employees at the DMO facility by reallocating workload data. *Id.* The misvouchering involved both government and commercial contracts, and the investigations concluded that there was no net damage to the Government. App. C at 22a; App. H at 41a. The DCAA con-

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a settlement is "fair, adequate, and reasonable under all the circumstances." 31 U.S.C. § 3730(c)(2)(B) (Supp. IV 1986).

cluded that, contrary to Mr. Gravitt's allegations, GE rather than the United States had lost money as a result of the misvouchering practices and had been cheated by its own employees. *Id.*

Nevertheless, nearly a year later, in October 1984, Mr. Gravitt filed a complaint in the name of the United States as a putative *qui tam* plaintiff or "relator" under the False Claims Act. App. H at 42a. The Justice Department immediately entered the action and assumed control of its prosecution pursuant to 31 U.S.C. § 3730(b)(3) (1982). App. C at 9a; App. I at 44a. In order to confirm the DCAA's earlier findings, the Government instituted joint criminal and civil investigations of the same allegations and called witnesses before a grand jury. App. C at 10a, 23a. In the fall of 1985, after interviewing over fifty people and reviewing tens of thousands of documents, Government investigators from the Federal Bureau of Investigation, the Air Force Office of Special Investigations, the DCAA and the Department of Justice again concluded that GE did not intend to defraud the Government and that, far from causing damage to the United States, GE itself had been cheated by the misvouchering scheme. App. C at 16a, 20a, 26a to 27a.

Based on these consistent findings, the Department of Justice declined to seek an indictment of GE and instituted negotiations with GE to settle the False Claims Act case. App. C at 10a. After several months of negotiations, the parties entered a settlement, reflecting the Government's desire to receive the statutory penalty ($2,000) for each of 117 possible false claims, even though it had suffered no injury in fact. App. C at 18a, 26a to 27a. Under this agreement, GE agreed to pay $234,000 and agreed that it would not seek compensation for undercharges on its Government contracts that resulted from the misvouchering practices. App. I at 45a to 47a.

2. The United States subsequently filed a stipulated dismissal of the action with the district court. App. J at

48a. Despite the fact that he had no personal knowledge about the joint investigation or the settlement negotiations, Mr. Gravitt charged that the settlement was a "sweetheart deal" that should not be allowed. App. C at 10a, 25a. The United States and GE responded that the "consent" of court required for dismissals by 31 U.S.C. § 3730(b)(1) (1982) did not empower the court in a case controlled by the Department of Justice to engage in a substantive review of the settlement and prevent the Government from dismissing the action.[2] App. C at 10a; App. E at 33a.

In February 1986, without receiving any evidence, the District Court summarily declared the settlement to be "unfair," denied its consent to dismiss, and appointed a United States Magistrate as a Special Master under Federal Rule of Civil Procedure 53 to review the fairness of the settlement. App. F at 35a to 36a. After it became clear that Mr. Gravitt was not a proper "relator" under the False Claims Act and had no standing to participate in the action, the court, over objections from the Government and GE, allowed Mr. Gravitt to intervene under Federal Rule of Civil Procedure 24 to contest the fairness of the settlement. App. C at 10a; App. G at 37a.

3. The Special Master conducted an exhaustive sixteen-month inquiry into the concerns of both the District Court and Mr. Gravitt with the settlement and allowed Mr. Gravitt discovery to support his allegations of impropriety. App. C at 11a. As a result of these efforts, the Master found that the evidence refuted each of Mr. Gravitt's allegations. In his lengthy Report and Recommended Decision, the Special Master concluded that there was no "collusion" between the parties, as alleged by Mr.

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[2] The United States and GE were granted certification of an interlocutory appeal under 28 U.S.C. § 1292(b) (1982) challenging the district judge's authority to disapprove the settlement and order evidentiary proceedings. App. E at 32a to 34a. The Sixth Circuit by order entered on Feb. 7, 1986 refused to accept the certified appeal. App. D at 30a to 31a.

Gravitt, and that the Government had conducted a diligent and thorough investigation. App. C at 23a to 28a. He also found that the evidence fully supported the Government investigators' determinations of no damage and no intent to defraud and, accordingly, recommended that the District Court approve the settlement and terminate the litigation. App. C at 26a to 29a.

On review of the Special Master's recommendation pursuant to Mr. Gravitt's objections, the District Court again rejected the settlement and declared it to be "inadequate." App. B at 8a. While acknowledging that the settlement should have been approved if judged by the standards of proof applicable under the False Claims Act at the time the settlement was entered, the District Court rejected the Special Master's recommendation on the ground that the Master should have applied the lower standards of proof contained in the 1986 amendments enacted nearly a year after the settlement was entered. App. B at 6a, 8a.

The District Court, however, did not address the United States' contention that the settlement was fully adequate regardless of whether the original or amended False Claims Act standards are applied, since the Government has repeatedly determined—and the Special Master agreed—that there was in fact no intent to defraud the Government and no injury in fact to the Government. Rather, the District Court deferred to Mr. Gravitt's objections to the manner in which the Government conducted its investigation (objections that were found by the Special Master to be groundless), and criticized the Justice Department for failing to welcome Mr. Gravitt's attempts to carry on this prosecution on behalf of the United States in place of—and in conflict with—the Justice Department. App. B at 6a to 8a.

4. GE and the United States filed timely appeals of the District Court's order rejecting the settlement and stipulation of dismisasl, arguing tha it constituted a col-

lateral order under 28 U.S.C. § 1291 and a refusal to enter an injunction within the meaning of 28 U.S.C. § 1292(a)(1). App. A at 1a. Mr. Gravitt moved to dismiss the appeals for lack of jurisdiction. *Id.*

Both the United States and GE opposed the motion, relying in part on this Court's decision in *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981), in which the Court squarely held that refusal to approve a settlement containing injunctive-type provisions is appealable under § 1292(a)(1) and reserved the question whether refusals to approve other types of settlements are appealable under the collateral order doctrine under § 1291.

On May 3, 1988, however, the Court of Appeals for the Sixth Circuit dismissed the appeals. App. A at 1a to 2a. The Court asserted:

> "The refusal to adopt a settlement agreement is an interlocutory order which is neither a 'collateral' order under 28 U.S.C. § 1291, nor is it an interlocutory order 'refusing' an 'injunction' under 28 U.S.C. § 1292(a)(1). *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981)."[3]

App. A at 2a.

REASONS FOR GRANTING THE WRIT

I. The Case Presents the Important Issue Reserved in *Carson v. American Brands, Inc.* Concerning the Appealability of an Order Rejecting a Settlement.

In *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981), the Court explained that it had granted certiorari because of "a conflict in the Circuits" on the question whether rejection of a settlement is either a final collateral order under § 1291 or, in appropriate cases, an order refusing an injunction under § 1292(a)(1). 450 U.S. at 82. Various circuits had split on each

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[3] On July 27, 1988, GE filed in the Sixth Circuit a petition for a writ of mandamus to compel the District Court to accept the settlement, on which no action has been taken.

of those two issues. *See id.* at 82 n.6. The Court held that, since the proposed settlement there would have imposed mandatory obligations, the order rejecting the settlement was appealable under 28 U.S.C. § 1292(a)(1) as tantamount to an order refusing an injunction. *Id.* at 83. The Court added that, in light of that disposition, "[w]e therefore need not decide whether the order is also appealable under 28 U.S.C. § 1291." *Id.* at 83 n.7.

This case now provides the proper vehicle for resolving that important question left open in *Carson* where, as is more typical of settlements, the negotiated end to the litigation involves the payment of money and the release of claims without other mandatory or prohibitory terms. Inexplicably, the court below read *Carson* as holding that an order refusing to accept a settlement is appealable under "neither" statute. App. A at 2a. Of course, the Court of Appeals was flatly wrong in characterizing what *Carson* held under § 1292(a)(1).

In concluding that *Carson* somehow answered the separate question that this Court expressly stated it was reserving—appealability under § 1291—the Court below relied on a footnote in *E.E.O.C. v. Pan American World Airways, Inc.*, 796 F.2d 314, 318 n.7 (9th Cir. 1986) (per curiam), *cert. denied*, 107 S. Ct. 874 (1987), which purported to explain the application of *Carson* to the collateral order rule. The Ninth Circuit held in *Pan American* that § 1291 is not available as a means to obtain review of an order refusing a settlement agreement, allegedly because *Carson*'s analysis under § 1292(a)(1) "was clearly intended to provide a definitive basis and standard for such interlocutory appeals." *Id.* Accordingly, the court found that its previous decision in *Norman v. McKee*, 431 F.2d 769 (9th Cir. 1970), *cert. denied*, 401 U.S. 912 (1971), which had allowed review of an order denying a settlement under § 1291, was implicitly overruled by *Carson*, even though *Carson* had expressly re-

served consideration of appealability under § 1291. *Pan American*, 796 F.2d at 317 n.7.[4]

This construction of *Carson* is squarely at odds with this Court's express reservation of the § 1291 issue. In no way did the Court imply that § 1292(a)(1) is the only statutory basis for appeal, since that view would have resolved the acknowledged conflict in the circuits on the § 1291 issue rather than reserving it for a later case—such as this one—that involves essentially a monetary rather than injunctive settlement.

II. An Order Rejecting a Settlement and Stipulation of Dismissal Is a Final Collateral Order.

The approach taken in *Pan American* and in the decision below is inconsistent with *Carson*'s analysis of the harm that may result if an order refusing to allow a settlement agreement cannot be appealed prior to final judgment after trial. The Court determined in *Carson* that an order preventing the parties from terminating their litigation pursuant to a settlement cannot be effectively appealed and remedied after final judgment. *Carson*, 450 U.S. at 86-88. The Court recognized that the entire purpose of settlement agreements—"to avoid the costs and uncertainties of litigation"—is lost if the parties are forced to trial. *Id.* at 87. Accordingly, the Court found that, at least in circumstances where—as in the present case—a party could withdraw consent to the agreement and nullify the settlement once trial is held, an order refusing the settlement could have the " 'serious, perhaps irreparable, consequence' of denying the parties

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[4] *Norman v. McKee* was among the conflicting circuit court cases cited by *Carson*. 450 U.S. at 82 n.6. The Court also cited *In re Int'l House of Pancakes Franchise Litig.*, 487 F.2d 303 (8th Cir. 1973), in which the Eighth Circuit allowed an appeal of an order denying a settlement. 450 U.S. at 82 n.6. *See also United States v. Dupris*, 664 F.2d 169 (8th Cir. 1981) (allowing appeal under § 1291 from an order refusing "leave of court" under Fed. R. Crim. P. 48(a) to allow the United States to dismiss a criminal prosecution).

their right to compromise their dispute on mutually agreeable terms." *Id.* at 88.

Although these findings of irreparable harm were made in *Carson* to determine the availability of appeal under § 1292(a)(1) from the refusal to enter an injunctive settlement, they equally satisfy the requirements for review of monetary settlements under the collateral order rule. The purpose of the collateral order rule is to enable appellate review of pre-trial orders "affecting rights that will be irretrievably lost in the absence of an immediate appeal." *Richardson-Merrell Inc. v. Koller*, 472 U.S. 424, 431 (1985). This rule allows the appeal of orders which "determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949).

To determine whether an order is appealable under the collateral order doctrine because it has irrevocably disposed of significant rights, the Court has defined three criteria that must be examined:

> "[T]he order must [1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment."

Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978) (footnote omitted). *See Van Cauwenberghe v. Biard*, —— U.S. ——, ——, 108 S. Ct. 1945, 1949 (1988).

The Court in *Carson* addressed each of these factors during the course of its § 1292(a)(1) analysis. First, the Court found that the order refusing to allow the settlement conclusively determined the "disputed question," because, as in this case, it "effectively ordered the parties to proceed to trial" rather than allowing them to resolve

their dispute on the terms they considered appropriate. *Carson*, 450 U.S. at 87. Second, the Court also made clear that the question of the reasonableness of a settlement is distinct from the merits of the case. In reviewing settlements, courts "do not decide the merits of the case or resolve unsettled legal questions," and, indeed, appellate review of an order rejecting a settlement would be more effective prior to the final determination on the merits, since it must be based on the parties' perceptions existing at the time of settlement. *Id.* at 88 n.14. Third, as previously discussed, *Carson* found that an order refusing a settlement that would be nullified if the parties are forced to trial is effectively unreviewable on appeal from a final judgment.

Thus, there is simply no reason in principle or policy to deny appealability to orders preventing the entry of settlement agreements whose terms are not sufficiently "injunctive" to fall within the scope of § 1292(a)(1). The loss of the right to settle a case and avoid the burden and risk of litigation is no less important or irreparable where the settlement consists solely of a monetary payment than it is for a settlement whose predominant effect is injunctive.

This case vividly illustrates this fact. The court below found that the consent agreement at issue, which provided for a monetary payment from GE and an agreement by GE not to seek compensation for contractual undercharges, proposes relief that is not sufficiently injunctive in character to allow appeal of the District Court's order as "an interlocutory order 'refusing' an 'injunction' under 28 U.S.C. § 1292(a)(1)." App. A at 2a.[5] The irreparable consequences of this order are, nevertheless, clear. The District Court has persisted for over two and a half years in blocking this settlement

[5] Both GE and the United States argued to the Court of Appeals that the proposed obligation to withhold claims against the Government constituted an injunctive order under *Carson*.

and will now subject GE to further discovery and a lengthy and unnecessary trial. The benefits of the proposed compromise to GE, to the United States, and to the judicial system will be irreparably lost absent an immediate appeal. Since the settlement agreement by its terms becomes "null and void" if the parties are forced to trial, App. I at 45a, there will be no way to remedy the very doubtful legality of the District Court's order after trial and final judgment.

III. The Decision Below Undermines the Important Ability of Litigants to Settle Cases Without Trial.

The availability of appeal from orders refusing to approve settlements is an important question of federal law affecting a broad range of cases. Judicial approval is required by statute or rule for settlements of private class actions and shareholder derivative suits,[6] for dismissals of federal criminal prosecutions,[7] and for the settlement or dismissal of a variety of federal civil enforcement actions, in addition to the False Claims Act itself.[8]

In an era of ever-increasing judicial dockets, it is important to encourage litigants to negotiate disposition of their disputes without trial. This goal is particularly

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[6] Fed. R. Civ. P. 23(e); Fed. R. Civ. P. 23.1.

[7] Fed. R. Crim. P. 48(a).

[8] *E.g.*, 8 U.S.C. § 1329 (1982) (requiring consent of court and statement of reasons for any settlement, compromise or discontinuation of proceedings for violation of immigration laws); 15 U.S.C.A. §§ 16(e), (f) (West Supp. 1988) (requiring courts, before entering antitrust consent judgments proposed by the United States, to determine that entry is in the "public interest"); 15 U.S.C. § 45(m)(C)(3) (1982) (requiring court approval of compromise or settlement of unfair competition actions by Federal Trade Commission); 30 U.S.C. § 820(k) (1982) (requiring court approval for compromise, mitigation or settlement by Secretary of Labor of penalty assessment which has become a final order of Federal Mine Safety and Health Review Commission).

important in the kinds of large and complex cases that, for one reason or another, require some form of judicial approval before the settlement becomes effective and the case is dismissed.

The policy against "piecemeal appeals" reflected in the final judgment rule of § 1291 actually argues in favor of immediate appeal of a district judge's order rejecting such a settlement. As the present case pointedly illustrates, it is far more efficient for the judicial system to entertain an immediate appeal that may completely resolve the dispute rather than to require extensive discovery and a full trial before the settlement issue—and others—may reach the appellate court.

IV. Immediate Appeal of Orders Rejecting Settlement in False Claims Act Cases Is Necessary to Avoid Irremediable Interference with the Government's Prosecutorial Discretion.

A number of appellate decisions—including one by the Sixth Circuit itself—have recognized that the availability of appeal from orders rejecting settlements and dismissals is particularly important in Government law enforcement actions in order to protect the Government's prosecutorial discretion against unwarranted interference. The decision below denying appeal under § 1291 fails to recognize the distinct factors militating in favor of appeal under the collateral order rule presented by Government law enforcement actions.

As the Second Circuit suggested in *Seigal v. Merrick*, 590 F.2d 35, 38-39 (2d Cir. 1978), there may be a need in private class actions or derivative suits to protect from premature appellate intervention the trial court's discretion to mediate the interests of a large number of vicariously represented persons.[9] In a Government enforce-

[9] The decision in *Seigal* denying appeal under § 1291 stressed the need to protect from appellate interference the necessary role of the

ment action where only the interests of the United States are at stake, however, the role of the trial court in reviewing a settlement and dismissal is, at best, minimal, and the need for appeal to prevent unwarranted judicial interference with the Government's enforcement responsibilities is correspondingly great.[10]

The Second Circuit itself has recognized, therefore, that the collateral order analysis for an order refusing a settlement of a Government enforcement action raises special factors that may not be present in the settlement of a private class action or derivative action. In *Donovan v. Occupational Safety and Health Review Commission*, 713 F.2d 918, 923 (2d Cir. 1983), the Second Circuit distinguished its ruling in *Seigal* in determining whether

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trial court in settlement review "because of the vicarious representation involved" in the shareholder suit, which may require the trial court to use the disapproval of a compromise "to edge the parties toward more equitable terms." 590 F.2d at 37, 39.

[10] Whether represented by the Department of Justice or a *qui tam* plaintiff, only the interests of the United States are at issue in a False Claims Act suit. Though a proper *qui tam* plaintiff may ultimately have a derivative claim to part of the recovery achieved for the United States, he cannot represent the United States once the Department of Justice has entered the case or prevent the Department of Justice from resolving the interests of the United States by settlement or dismissal. *See* 28 U.S.C. §§ 516-19 (1982) (vesting responsibility in the Attorney General to represent the litigation interests of the United States). *Cf. Confiscation Cases*, 74 U.S. (7 Wall.) 454 (1868) (finding that informer entitled to part of proceeds from property confiscated for the United States did not have a vested interest prior to judgment allowing him to prevent dismissal by the Attorney General).

While the 1986 amendments to the False Claims Act suggest that the *qui tam* plaintiff may object to the Government's dismissal or settlement of a False Claims Act case, 31 U.S.C. § 3730(b)(1), (2) (Supp. IV 1986), this is a procedural right only and does not create any substantive interest different from that of the United States. *Cf. Donovan v. Occupational Safety and Health Review Comm'n*, 713 F.2d 918, 927 (2d Cir. 1983) (procedural right to party status does not create substantial entitlement to contest settlement).

an order by the Occupational Safety and Health Review Commission rejecting a settlement between the Secretary of Labor and an employer falls within the collateral order exception to the "final order" requirement of 29 U.S.C. § 660(b) (1982). Quoting from the similar determination of the Third Circuit in *Marshall v. Oil, Chemical and Atomic Workers International Union*, 647 F.2d 383, 387 (3d Cir. 1981), the court found that the Commission's order rejecting the settlement is appealable because it interfered with the prosecutorial authority of the Secretary:

> "[W]e are presented with a serious and unsettled question which is too important to be denied review: the power of the Secretary to settle a case as the exclusive prosecutor of the Act. We think it is readily apparent that the Commission's order is final within the meaning of *Cohen* [*v. Beneficial Industrial Loan Corp.*] and that this court should assume jurisdiction to preserve rights that would otherwise be lost on review from a final judgment."

713 F.2d at 923.[11] Indeed, the Sixth Circuit itself found that a Commission order interfering with the prosecutorial authority of the Secretary by preventing the Secretary from withdrawing an OSHA citation and terminating its prosecution, which a labor union sought to pursue, is "too important to be denied review" and is appealable under the collateral order rule of *Cohen*. *See Marshall v. Occupational Safety and Health Review Commission*, 635 F.2d 544, 548-49 (6th Cir. 1980).

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[11] Other courts of appeals have similarly found that Commission orders preventing the Secretary from entering a settlement are appealable as collateral orders. *See Donovan v. Int'l Union, Allied Indus. Workers*, 722 F.2d 1415, 1417-18 (8th Cir. 1983); *Donovan v. United Steelworkers of America, AFL-CIO*, 722 F.2d 1158, 1160 (4th Cir. 1983); *Donovan v. Oil, Chem., and Atomic Workers Int'l Union*, 718 F.2d 1341, 1344-45 (5th Cir. 1983); *cert. denied*, 466 U.S. 971 (1984).

Similarly, in *United States v. Dupris*, 664 F.2d 169, 172-74 (th Cir. 1981), the Eighth Circuit allowed appeal under § 1291 of orders refusing to grant the Government permission under Fed. R. Crim. P. 48(a) to dismiss a criminal action, recognizing that significant separation of powers issues are implicated by such an order. *See also United States v. Cowan*, 524 F.2d 504, 505 (5th Cir. 1975), *cert. denied*, 425 U.S. 971 (1976) (allowing consideration on appeal under § 1291 of an order refusing dismissal under Rule 48(a) in conjunction with an order appointing a special prosecutor).

The Government's efforts to settle a civil suit under the False Claims Act should be treated the same way. As this case illustrates, judicial refusal to allow a settlement or dismissal of law enforcement proceedings by the United States will inevitably present serious questions of constitutional dimension concerning the proper scope of judicial and executive discretion. As Chief Justice Rehnquist, writing for the Court, declared in *Heckler v. Chaney*, 470 U.S. 821, 831 (1985):

> "This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion. [citations omitted] This recognition of the existence of discretion is attributable in no small part to the general unsuitability for judicial review of agency decisions to refuse enforcement."

This "absolute discretion" is compelled in part by Article II of the Constitution "inasmuch as it is the Executive who is charged by the Constitution to 'take Care that the Laws be faithfully executed.' " 470 U.S. at 831-32. The Chief Justice had earlier made clear that the same analysis should apply to prevent judicial rejection of Government decisions to settle litigation. *See* opinion (joined by then Chief Justice Burger and Justice White)

dissenting from a summary affirmance of the settlement in *Maryland v. United States*, 460 U.S. 1001, 1004 (1983).[12] *See also In re International Business Machines Corp.*, 687 F.2d 591, 602 & n.9 (2d Cir. 1982) (noting but not reaching the Government's argument that judicial interference with an executive branch decision to dismiss a case raises separation of powers and Article III problems).

Unless an order rejecting the settlement or dismissal of a law enforcement action brought by the United States may be appealed as a final collateral order, there is no effective appellate remedy for a district court's unlawful interference with the Government's prosecutorial decisions (except, perhaps, through the extraordinary writ of mandamus). Such interference should, of course, be very unusual. The courts of appeals have concluded that, by virtue of the separation of powers doctrine, a trial court cannot constitutionally deny a prosecutor's motion to dismiss under Rule 48(a) with the possible exception "in extremely limited circumstances in extraordinary cases . . . when the prosecutor's actions clearly indicate a 'betrayal of the public interest.'" *United States v. Hamm*, 659 F.2d 624, 629 (5th Cir. Unit A Oct. 1981) (en banc) (quoting *United States v. Cowan*, 524 F.2d 504, 514 (5th Cir. 1975), *cert. denied*, 425 U.S. 971 (1976)).[13] These

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[12] At issue in that case was judicial review of the Government's settlement of its antitrust action against American Telephone & Telegraph Co. under the Antitrust Procedures and Penalties Act, 15 U.S.C.A. §§ 16(b-h) (West Supp. 1988). The dissenting Justices viewed the district court's role in review of that settlement as constitutionally infirm despite the substantial impact of the settlement on the interests of non-parties. Where, as in a False Claims Act case, only the financial interests of the United States are at issue, the constitutional limits on judicial power to reject the Executive's settlement are even more clear.

[13] *See Dupris*, 664 F.2d at 175; *Cowan*, 524 F.2d at 513. In *Rinaldi v. United States*, 434 U.S. 22, 29-30 n.15 (1977), this Court declined to determine whether a court would have discretion under

constitutional principles should apply equally in a civil enforcement action by the United States and should make a judicial denial of a Governm.nt dismissal or settlement a rare occasion. When, however, as in this case, the district judge issues such an order, the clash of judicial and executive power may be serious and irremediable, absent appeal under § 1291.

Although district judges rarely interfere with the Government's decision to settle and dismiss a case, the risk illustrated by this case is real and growing. The 1986 amendments to the False Claims Act not only encourage private citizens to initiate actions in the name of the United States but also allow them to object to settlements even after the Justice Department has entered the case. There is, therefore, a heightened danger that settlements achieved by the Justice Department will be unlawfully blocked, as in this case, by district judges and private parties who disagree with the prosecutorial judgment of the Justice Department.[14] According to recent Department of Justice statistics, private "relators" have filed at least 75 *qui tam* actions under the False Claims Act just since its 1986 amendments, and the Justice Department has asserted control over many of them. *See* Daily Report for Executives (BNA) No. 132 at A-15 (July 11, 1988). The Justice Department's abiilty to assume effec-

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Rule 48(a) to refuse to enter a dismissal even if the prosecutor acted in bad faith.

[14] Prior to its 1986 amendment, the Act stated, consistent with constitutional principles, that, "[i]f the Government proceeds with the action, the action is conducted *only* by the Government." 31 U.S.C. § 3730(b)(3) (1982) (emphasis added). Under amendments enacted nearly one year after the parties reached and filed their settlement in this case, the Government is given "the primary responsibility for prosecuting the action" if it enters the case, 31 U.S.C. § 3730(c)(1) (Supp. IV 1986), but the court is apparently allowed to consider objections that the private party who initiated the action may interpose to a settlement reached by the Government. *See* 31 U.S.C. § 3730(c)(2)(B) (Supp. IV 1986).

tive control of those cases and negotiate appropriate settlements will be seriously jeopardized if district judges may reject those settlements without practical appellate review.

CONCLUSION

The appealability under § 1291 of an order refusing settlement and dismissal is a relatively straightforward but important and recurring question. As the Court recognized in granting certiorari in *Carson*, this is the type of question that the Court should answer. Although the existence of a narrower ground for decision allowed the Court to defer answering it then, the Court should take this occasion to decide it.

Accordingly, the Court should issue a writ of certiorari to review the judgment of the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

Of Counsel:
BENJAMIN W. HEINEMAN, JR.
Senior Vice President
and General Counsel
PHILIP A. LACOVARA
Vice President and
Senior Counsel for Litigation
and Legal Policy
GENERAL ELECTRIC COMPANY
3135 Easton Turnpike
Fairfield, CT 06431
(203) 373-3632

ERWIN N. GRISWOLD
Counsel of Record
STEPHEN J. BROGAN
TIMOTHY J. FINN
JONES, DAY, REAVIS
& POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939
Counsel for Petitioner

August 1, 1988

APPENDICES

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

88-3171; 88-3264

JOHN MICHAEL GRAVITT,
Bringing This Action on Behalf of
The United States Government,
Plaintiff-Appellee,
Cross-Appellant,

vs.

GENERAL ELECTRIC COMPANY,
Defendant-Appellant,
Cross-Appellee.

[Filed May 3, 1988]

ORDER

Before: MERRITT and BOGGS, Circuit Judges and PECK, Senior Circuit Judge.

The United States ("the government") and General Electric (G.E.) filed separate notices of appeal in this defense contractor fraud action from the district court's order dated January 22, 1988. That order refused to adopt the report and recommendation of the Magistrate which recommended acceptance of a proposed settlement agreement. The *Qui tam* plaintiff has filed a motion to dismiss both appeals. The government and G.E. oppose that motion.

The basis for the motion to dismiss is that the order appealed from is not final for purposes of 28 U.S.C. § 1291. The refusal to adopt a settlement agreement is an interlocutory order which is neither a "colalteral" order under 28 U.S.C. § 1291, nor is it an interlocutory order "refusing" an "injunction" under 28 U.S.C. § 1292 (a)(1). *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981). *See E.E.O.C. v. Pan American World Airways, Inc.*, 796 F.2d 315, 318 n.7 (9th Cir. 1986) (per curiam) *cert. denied* 107 S.Ct. 874 (1987); *see also United States v. Jones & Laughlin Steel Corp.*, 804 F.2d 348 (6th Cir. 1986).

It is ORDERED that the motion to dismiss be granted as to both appeals 88-3171 and 88-3264.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil No. C-1-84-1610

JOHN MICHAEL GRAVITT,
Plaintiff,

v.

GENERAL ELECTRIC CO.,
Defendant.

[Filed Jan. 22, 1988]

ORDER

This matter is before the Court under the following circumstances. John Gravitt, relator herein, brought action against the General Electric Company asserting that there had been substantial overcharges against the United States. On December 13, 1985 the United States represented by the Department of Justice and the General Electric Company entered into a tentative settlement of all claims. This matter was referred to the United States Magistrate (Doc. 31) with instructions to inquire into such settlement. On August 24, 1987 the United States Magistrate filed a Report and Recommendation (Doc. 88) recommending that the Court approve such settlement. On December 18 and 21, 1987 this Court held a hearing at which time evidence and testimony was pre-

sented and counsel argued their respective positions for approximately three and one-half hours.

This case turns upon 31 U.S.C. § 3729. A critical and perhaps controlling question to be answered is the retroactive effect of amendments to that section signed into law on October 27, 1986. The amended statute provides in part: "Any person who knowingly presents or causes to be presented to an officer . . . of the United States government . . . a false or fraudulent claim for payment or approval . . . . is liable to the United States government for a civil penalty of not less than Five Thousand Dollars and not more than Ten Thousand Dollars plus three times the amount of damages which the government sustains because of the act of that person . . . ." On the same date there likewise became effective an amendment to 31 U.S.C. § 3731 which provides in part as follows: "In any action brought under § 3730 the United States shall be required to prove all essential elements of the cause of action including damages by a preponderance of the evidence . . . ."

Section 3731 prior to amendment did not speak to the level of proof. However, the United States Court of Appeals for the Sixth Circuit in construing the False Claims Acts required that allegations in a civil action be proven by showing "specific intent to defraud" the United States by "clear, unequivocal, evidence. *United States v. Ekelman & Associates, Inc.*, 532 F.2d 545, 548 (6th Cir. 1976); *United States v. Ueber*, 299 F.2d 310, 314-15 (6th Cir. 1962).

While federal appellate courts are yet to address the issue of retroactive application of the 1986 amendments to the False Claims Act, other federal district courts have reached differing conclusions on the issue. *See United States ex rel. Boisvert v. FMC Corporation*, No. 86020163 (N.D. Cal. September 9, 1987) (holding that the 1986 amendments may not be applied retroactively to cut off a defense which existed under the old law);

United States v. Bekhrad, 672 F. Supp. 1529 (S.D. Iowa 1987) (strictly construing statute to apply prospectively only); *United States v. Hill*, MCA No. 84-2144-RV (N.D. Fla. November 12, 1987) (holding that retroactive application of amendments will not result in manifest injustice). In a well-reasoned opinion in *Hill*, Judge Vinson applied the well-settled principle of statutory construction enunciated by the Supreme Court in *Bradley v. School Board*, 416 U.S. 696, 711 (1974) "that a court is to apply the law in effect at the time it renders its decision, unless doing so would result in a manifest injustice or there is statutory or legislative history to the contrary." After careful consideration of the facts in the present case, the Court finds that retroactive application of the 1986 amendments to the False Claims Act does not result in a manifest injustice. Moreover, the Court agrees with Judge Vinson that concern for the public well-being militates toward the immediate application of the amendments.[1]

It was established at the hearing that the Department of Justice of the United States directed the FBI to conduct an inquiry. Special Agent John Ryan of the Cincinnati Office was assigned to this task and did conduct such an inquiry. Agent Ryan conducted a criminal investigation and concluded that based upon the evidentiary standard of "proof beyond a reasonable doubt" a criminal prosecution could not be sustained. It may be asserted that since Agent Ryan was an accountant by training that his conclusion regarding financial fraud also embraced a "clear and convincing" test of fraud. Agent Ryan was not concerned with a preponderance of evidence inquiry and insofar as the record indicates did not use that standard. The Court has no reason to question the

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[1] It is interesting to note that in *Hill*, the Government took the position that the amendments should be retroactively applied, contrary to its position in the present case.

conclusion of the FBI that there is insufficient evidence for a criminal prosecution.

In view of the extensive investigation made by the FBI and in view of the equally extensive inquiry by the United States Magistrate the Court believes that if a clear and convincing test were to be used, the settlement should be approved.

However, because this Court holds that the 1986 amendments apply retroactively to this matter, the settlement must be tested with a view toward the Government's ability to prove allegations by a preponderance of the evidence, with no requirement to show specific intent to defraud.

It is beyond doubt that there have been instances of massive fraud perpetrated by manufacturers upon the United States and in some instances either aided or overlooked by the various procuring agencies. Terms such as "a $500.00 hammer" or a "$6,000.00 coffee maker" have been used as a form of shorthand to indicate how vast the overcharges have been. This is not to determine that there was in fact fraudulent conduct in this case, but simply to indicate that matters of this sort should be approached with somewhat more caution then they might have been approached fifteen years ago.

The conduct of the Department of Justice in this matter bears some inquiry. There isn't a Judge in the United States who has not at some time been confronted with a litigant, usually *pro se*, who describes a conspiracy so vast as to include the entire governing structure of the United States. Great expenditures of time, energy and money are frequently required to demonstrate that the assertion is either out of ignorance, a spirit of revenge by a disgruntled former employee, or the product of paranoia. It is entirely possible that the Department of Justice approached this case in the first instance with the same view in mind. That initial view is excusable. The

subsequent conduct of the Department of Justice is not. It must have developed early on that Mr. Gravitt does not fit the customary pattern of the conspiracy alleging litigant and even more important his counsel is a highly respected and exceedingly competent member of the bar of this Court. Regrettably, the legal profession has its share of "scavengers"—those attorneys who lurk on the edge of propriety and who will commence meritless litigation solely for the purpose of extracting a nuisance value settlement. Such acts approach extortion and contribute to the general public disdain for our profession. Plaintiff's counsel, however, is demonstrably a very competent, skilled and effective lawyer. That if nothing else should have convinced the Department of Justice that here was an ally to be encouraged, who was willing to relieve the Department of Justice of the expenditure of manpower and money in conducting appropriate discovery. For reasons that never have been made clear, the Department of Justice rather than welcome the assistance of plaintiff and his counsel, took every step possible to frustrate their participation. The Department of Justice took no deposition, interviewed no witness and instead confined its efforts to opposing all attempts by plaintiff's counsel to conduct appropriate discovery.

A specific instance deals with an official of the General Electric Company whom plaintiff wishes to depose. That witness refused to answer asserting the privilege against self-incrimination contained in the Fifth Amendment to the United States Constitution. In response to direct questions by the Court, counsel for the United States admitted that there was no criminal prosecution pending nor was any contemplated out of the facts in this case. Despite the lack of such proceedings the United States continues to refuse to immunize that official and thereby enable the plaintiff to proceed with discovery. This is not to suggest that the Court has determined that simply because a person has asserted a Fifth Amendment

right against self-incrimination, that such is evidence of guilt. Not so. This event has been cited solely to point out the remarkable lack of cooperation given by the Department of Justice.

The Department of Justice and the General Electric Company propose to settle all claims by the payment of $234,000.00. In light of the provision in the 1986 amendments for increased penalties, a lesser burden of proof and no requirement for proof of specific intent, the Court determines from the totality of the proceeding thus far that such a settlement is inadequate. Therefore the Court rejects the Report and Recommendation of the United States Magistrate and this case is hereby returned to the trial docket.

IT IS SO ORDERED.

/s/ Carl B. Rubin
CARL B. RUBIN
Chief Judge
United States District Court

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CASE NO. C-1-84-1610

UNITED STATES *ex rel.*
JOHN MICHAEL GRAVITT,
Plaintiff

v.

GENERAL ELECTRIC COMPANY,
Defendant

REPORT AND RECOMMENDATION

This case was originally brought by John M. Gravitt, a former General Electric (GE) employee, on behalf of the United States (US) under the *Qui Tam* provisions of the False Claims Act, 31 U.S.C. § 3730. Gravitt (now an intervenor) alleged that employees at GE's Development Manufacturing Operation (DMO), Aircraft Engine Plant, Evendale, Ohio, had engaged in a scheme to defraud the government through falsifying the number of hours worked on government contracts. DMO produces developmental jet engine hardware to support development programs at GE. It also reworks and modifies jet engine hardware and lends assistance to engineering functions and hardware design to assure that proposed parts are manufacturable. The US entered an appearance in the case on December 18, 1984, and took over its prosecution pursuant to 31 U.S.C. § 3730(b)(2) & (3). The US moved for a stay of proceedings

pending the results of a criminal investigation of GE. A stay until July 29, 1985 was ultimately granted.

A criminal investigation was conducted between November 1984 and October 1985. On October 30, 1985, the United States Attorney declined to prosecute GE. Shortly thereafter, on November 15, 1985, the date of the final pretrial conference in the civil case, the US accepted GE's settlement offer. Upon being informed that settlement had been reached, the Court cancelled the final pretrial conference and scheduled a status conference, to which Gravitt's counsel was invited. Gravitt objected to the settlement between GE and the US and claimed the case could not be settled without the Court's written approval. The US and GE claimed Gravitt had no standing to object because he was not a proper party to the case originally, and that the Court had no role in approving a voluntary settlement by the parties.

After conducting a hearing, the Court rejected the stipulation of dismissal between the US and GE and urged the parties to apply to the Court of Appeals for permission to appeal the decision in order to obtain a definitive ruling on the District Court's jurisdiction. The Court of Appeals ruled that interlocutory appeal was not appropriate and denied the parties' petitions for permission to appeal. Upon return of the case to the District Court, the Court appointed the United States Magistrate as a Special Master to conduct an inquiry to determine the fairness of the settlement agreement underlying the stipulation for dismissal. Because his status as a party in the case was in question, Gravitt moved to intervene pursuant to Fed. R. Civ. P. 24. That motion was ultimately granted.

On March 14, 1986, we ordered the US to submit a proffer, supported by affidavits and documents, detailing the factual basis for the settlement, the appropriateness of the investigation conducted in this matter, the ration-

ale that forms the basis for the computation of civil penalties, and why the settlement is in the interest of the US. GE was given an opportunity to reply to the proffer. Gravitt was given an opportunity to reply to the submissions of the US and GE. GE filed a motion requesting reconsideration of the Magistrate's order granting Gravitt an opportunity to respond. This was denied by the District Judge, who determined that Gravitt had the right to intervene in all matters germane to this action.

A briefing schedule was established regarding GE's motion for protective order and Gravitt's proposed motion to compel discovery. Following the submission of briefs, on October 3, 1986, we entered an order granting in part Gravitt's motion to compel and GE's motion for protective order. (Doc. 68). In our Order, we identified specific issues we wished Gravitt to explore in discovery, in addition to those Gravitt had identified. (Doc. 68, pp. 4-6). We granted Gravitt the right to discover documents and depose witnesses relevant to the issue of the fairness of the settlement. A schedule for conducting discovery and submitting briefs was established. Following the submission of briefs, we have spent countless hours reviewing all of the legal memoranda, depositions and exhibits.

FALSE CLAIMS ACT

In determining the fairness of the settlement agreement in this case, it is important to understand the requirements of the False Claims Act. In a case under the Act, in this circuit, the gravaman of the action is intentional fraud and misrepresentation, which the plaintiff is required to establish by "clear, unequivocal, and convincing evidence." *United States v. Ueber*, 299 F.2d 310, 314 (6th Cir. 1962); *United States v. Ekelman & Associates, Inc.*, 532 F.2d 545, 548 (6th Cir. 1976). There-

fore, in this Circuit, the standard of proof more closely resembles that of a criminal case than a civil case.[1]

A showing of actual knowledge of the falsity of the representations is required in order to establish liability under the Act. It is not sufficient to prove that the defendant should have known the representations were false. *Ekelman*, 532 F.2d at 548. In order to recover any damages other than the statutory forfeiture penalty, plaintiff must show actual losses sustained as a result of the false claims. *United States v. Thomas*, 709 F.2d 968, 972 (5th Cir. 1983); *United States v. Klein*, 230 F. Supp. 426 (W.D. Pa. 1964), *aff'd*, 356 F.2d 983 (3rd Cir. 1966); *Blusal Meats, Inc. v. US*, 638 F. Supp. 824, 827 (S.D.N.Y. 1986); *United States v. Di Bona*, 614 F. Supp. 40, 43 (E.D. Pa. 1984).

Proof of actual damages is not a prerequisite to recovery of a forfeiture penalty under the Act. *United States v. Miller*, 645 F.2d 473, 476 n. 4. (5th Cir. 1981); *United States v. Hughes*, 585 F.2d 284, 286 n. 1 (7th Cir. 1978); *United States v. Ridglea State Bank*, 357 F.2d 495, 497 (5th Cir. 1966). The forfeiture penalty is not dependent upon the fraudulent claim being profitable to the maker, *United States v. Silver*, 384 F. Supp. 617, 620 (E.D.N.Y. 1974), *aff'd without opinion*, 515 F.2d 505 (2d Cir. 1975), but is intended at least in part because the investigation of the claim is costly to the government. *Toepleman v. United States*, 263 F.2d 697, 699 (4th Cir.), *cert. denied*, 359 U.S. 989 (1959). The trial court is without discretion to alter the statutory

[1] There is a difference among the federal circuit courts of appeal as to whether the standard of proof under the Act is proof by a preponderance of the evidence or by clear and convincing evidence. *Federal Crop Ins. Corp. v. Hester*, 765 F.2d 723, 727 (8th Cir. 1985). The Second, Sixth and Ninth Circuits as well as the Court of Claims, have adopted the clear and convincing evidence test. Other Circuits, such as the Fifth and the Eighth, have adopted the preponderance of the evidence test. *Id.* at 727-28.

amount of $2,000 per false claim. *Hughes*, 585 F.2d at 286.

FACTORS FOR DETERMINING REASONABLENESS OF SETTLEMENT

The Act sets forth the Attorney General's responsibility to "diligently" investigate a violation. 31 U.S.C. § 3730(a) (1986). The Act specifies that settlement of the action should be approved if the Court determines that the proposed settlement is "fair, adequate, and reasonable under all the circumstances." 31 U.S.C. § 3730 (c)(2)(B). No particular standard of review is specified; however, the parties agree that the standard developed in cases concerning Court approval of class action settlements pursuant to Fed. R. Civ. P. 23 should apply.

In *Stotts v. Memphis Fire Department*, 679 F.2d 541 (6th Cir. 1982), *rev'd on other grounds*, 467 U.S. 561 (1984) and *Williams v. Vukovich*, 720 F.2d 909 (6th Cir. 1983), the United States Court of Appeals for the Sixth Circuit discussed factors courts should consider in determining if a particular settlement is fair, reasonable and adequate. The parties agree that the following are the major factors to consider:

1) The likelihood of success on the merits balanced against the relief offered by the proposed settlement.

2) The complexity, expense, and likely duration of this litigation.

3) The stage of the proceedings and the amount of discovery completed.

4) The opinions of counsel.

5) Collusion and lack of arms-length negotiations.

6) Objections to the settlement.

7) Public Interest.

The relevancy of these and other factors will vary from case to case. *In re Art Materials Antitrust Litigation*, 100 F.R.D. 367, 371 (N.D. Ohio 1983).

POSSIBLE GROUNDS FOR CLAIMING THAT THE SETTLEMENT WAS NOT FAIR

In addition to those issues raised by Gravitt, we suggested certain areas of inquiry Gravitt's counsel should pursue to test the fairness of the settlement. *See* Doc. 68, pp. 5-6. Both Gravitt's claims and the issues raised by the Special Master are discussed below.

Forfeiture Penalty Does Not Apply To Internal Documents

Gravitt contends that a civil penalty may be imposed for each false internal time record; thus the potential recovery for the government in this case on civil penalties alone is $29,160,000. This claim is specious. In our previous Order we determined that there is no authority for assessing a civil penalty under the Act for false internal documents. Only false claims submitted to the government are the subject of civil penalties. (Doc. 68, p. 3).

Formal Civil Discovery Is Not The Exclusive Means For Detecting False Claims

Gravitt alleges that only formal civil discovery, conducted by an attorney during formal procedures such as depositions, can disclose the extent of the fraud in this case. In our previous Order, we determined that formal civil discovery was not necessary in this case, because the criminal investigation conducted by the FBI was at least the equivalent of civil discovery.[2] Furthermore, we

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[2] An example of the disadvantages of formal discovery is found in the depositions taken by James Helmer, Gravitt's counsel in this case. The transcript reveals that during these depositions, he was constantly interrupted by GE attorney Stephen Brogan, often for

found that impeachment testimony of FBI agents was the practical equivalent of impeachment by deposition. (Doc. 68, p. 4).

The Investigation Was Reasonably Limited To Activities in The DMO Shop During the Years 1981 through 1983

The investigation was reasonably limited to Gravitt's allegations. In a statement made to the US, Gravitt alleged two types of misvouchering—recording labor hours to the wrong job and recording idle time to the wrong job. (Ex. 1 to US reply, Doc. 87). Gravitt fixed the beginning of the misvouchering of idle time as early 1982 and did not fix the beginning of misvouchering of labor hours. He brought these allegations to the attention of GE in June, 1983, and GE brought them to the attention of DCAA shortly thereafter.

The investigation confirmed alterations in time records in DMO at GE's Evendale plant during the time period 1981 through 1983. It disclosed that misvouchering was instituted by Robert Kelly, who became a unit man[a]ger in DMO in 1980, and that alterations of vouchers began in 1981. Many employees of DMO were highly skilled. As the volume of work fluctuated, they experienced periods of time when there was no work to perform. In order to appear more productive and avoid being laid off, supervisors falsified and altered time records. The alterations appeared to have stopped in 1983. A review of January 1985 vouchers confirmed that the rate of altera-

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no apparent legitimate reason. The interruptions often lasted several pages of transcript. Brogan insisted that Helmer submit to questioning by Brogan before he would permit questioning the witness. Helmer, appropriately, did not respond in kind, and proceeded with the deposition. Nevertheless, a private *ex parte* interview of a witness conducted during a criminal investigation by an FBI agent specially trained in such matters would have been more effective in producing the desired information.

tions had fallen from 25% to only 3%, the latter apparently a normal rate of erroneous vouchers.

The FBI was aware of Gravitt's allegation that misvouchering occurred outside DMO, and Agent Ryan explored this possibility. However, no significant leads were developed. The investigation revealed that the motive for the misvouchering in this case was to make DMO appear more efficient to its superiors, thus discounting related misvouchering outside DMO. Although Gravitt had referred to GE newsletters expressing concern over misvouchering, it would not be unusual to find that, in a corporation the size of GE, misvouchering had occurred somewhere other than in DMO. However, that is beyond the scope of this investigation. We can find no reasonable basis in the record for investigators to believe that fraudulent misvouchering related to this case occurred outside DMO. Gravitt appears to believe that the scope of the investigation should encompass all possible allegations of misvouchering at any GE site, even though unrelated to the scheme of DMO. This is not reasonable. The settlement agreement is limited to acts of misvouchering at DMO occurring between 1981 and 1983. Thus, the US has not released GE from any claims arising outside this time period.

The Government's Review of Time Records Was Adequate

We requested Gravitt to explore through discovery why the US reviewed only 9100 of the 60,000 time records involved in this case. The evidence indicates that, prior to reviewing the records, the FBI, OSI and DCAA representatives decided that they would begin with a six month period and expand it if necessary. The sample was designed to focus on time periods most likely to reflect alterations. The selected months were chosen to be representative of each year and avoid plant shutdowns and vacations, in order to test for changes and patterns.

It was reasonable for investigators to believe that this sample would reflect the highest percentage of alterations. Because the government's position in settlement was based on the percentages obtained after analysis of a sample that presented the highest possible incidence of fraud, it was reasonable to believe that the expenditure of many hours reviewing the remaining records would only dilute the percentage of alterations and would not benefit the government's case.

Gravitt alleges the US failed to investigate why GE destroyed "thousands of relevant time records." However, the records referred to had been reviewed by GE and DCAA when Gravitt raised his claim in 1983. That review found no wrongful impact on government contracts. The more recent investigation supports the correctness of that view. At that time, thinking the matter closed, DCAA did not require GE to maintain its records beyond the normal retention period approved by DCAA. The GE Evendale Plant record retention plan complies with contractual agreements and the Defense Acquisition Regulation in effect at that time.

We also asked Gravitt to explore whether the US adequately investigated time records that were not altered, but may have been falsified in their original state. After discovery, Gravitt argued that many false records would not so indicate on their face, because either the information was falsified originally, or an accurate record was destroyed and a counterfeit substituted. Gravitt claims the investigation was deficient for failing to interview employees or take handwriting specimens to identify the authors of such records. The US claims that there was no reliable means of investigation to determine the original information on the records. Furthermore, investigators concluded that, if records were falsified in their original state, identification of them would reveal the same pattern as the altered records, thus yielding the same results when analyzed. Interviews of the hourly

employees would not aid in this investigation, because the supervisors were the ones who falsified records, as Gravitt himself acknowledged.

The FBI thoroughly interviewed supervisory officials, but were unable to specifically identify records altered in their original state. The supervisory officials admitted their roles in falsifying records. Their motives were: to prevent layoffs and keep their jobs, to mask inefficiency and idleness, to hide overruns on individual contract jobs. Therefore, we believe it was reasonable for the US to conclude that the falsification of records in their original state would follow the same pattern as the alteration of records. It was a series of random acts not designed to obtain money from the government by fraud, but to make the activities of DMO appear more efficient than they were to their superiors, thus preventing layoffs and saving jobs. No witness was able to establish that anyone above the position of unit manager had knowledge of the scheme. The scheme appeared to have been originated by Robert Kelly, a former unit manager who has since died.

In our earlier Order, we indicated that the settlement was based on 117 false vouchers, although 186 were found to be false. We asked Gravitt to explore this matter in discovery. Gravitt made no argument on this basis after discovery, and for good reason. Our statement was based on a misreading [of] the October 23, 1985 memorandum from the United States Attorney to the Justice Department recommending approval of the settlement. In that memorandum, the United States Attorney notes that 303 claims were submitted to the Air Force by DMO during the pertinent period and that 117 were false, leaving a balance of 186. There is no indication that the remaining 186 claims were found to be false; rather the contrary is indicated. Thus, there is no basis in these figures to criticize the investigation.

Gravitt also argues that the US failed to investigate properly the high levels of idle time at DMO. Employees were required to account for their time at DMO. Some of their time was non-productive; that is, they were idle while waiting for training or to perform another task. GE maintained a category to reflect this idle time, and it was charged as such, rather than as labor. Gravitt claimed that DMO employees had been charging idle time as though it were actual labor and that it had been charged to rework and modification jobs.[3] An analysis of GE records revealed that the total charges for rework and modification during the relevant period were not sufficient to absorb the amount of idle time allegedly misvouchered, thus discounting Gravitt's claim. Nevertheless, the investigators pursued the allegation. Almost half of Special Agent Ryan's time was spent on this issue.

GE supplied Ryan with its floor checks of idle time, and Ryan interviewed supervisory personnel concerning the issue. However, audit methods could not be used to measure idle time misvouchering, because it was not possible to go back in time and determine whether an individual had been waiting for tools or training on a certain occasion. There were no documents by which one could compute the number of compensable idle time hours engaged in by GE employees. Gravitt argues that idle time figures set forth in a study done after the pertinent time period could be used to estimate excessive idle time. However, this is hypothetical and would not produce proof by clear, unequivocal and convincing evidence. Idle time is not necessarily consistent over a period of time. It increases and decreases depending upon various conditions. Furthermore, Gravitt's original allegation was that idle time was fraudulently misvouchered, not that it was excessive.

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[3] Rework and modification is work performed to modify an existing part without making a new part. Making a new part from raw stock is called new make.

Investigators considered reviews of labor charges by engineers to determine if idle time was excessive, but the Assistant US Attorney believed that the results would have been speculative and not admissible evidence. The investigators traced code numbers listed on documents provided by Gravitt that allegedly reflected the shifting of idle time. They found that the contracts listed to avoid shifting idle time to were usually government contracts or Independent Research and Development (IR&D) work, and not commercial contracts. GE and the government shared the costs for IR&D work. Thus, the results of the analysis indicated that idle time costs were shifted away from government reimbursed jobs, not to them. Based on the above, we believe the US made a reasonable effort to pursue the idle time claim.

The Alteration Of Time Records
Resulted In A Loss To GE

The investigators were reasonable in believing, based on the results of the interviews conducted and the review of records, that the purpose of the misvouchering scheme was not to increase costs to the government, but to make the DMO operation appear more efficient and thus avoid layoffs. In fact, in many cases, the employees who were changing records could not distinguish a commer[ci]al job from a government job. DCAA constructed a sample and reviewed vouchers to determine any pattern of misvouchering. None was found. GE conducted a study and presented the results to Agent Ryan. It was consistent with the findings of the investigators. Ryan, who is a CPA and has conducted a number of audits and understands sampling techniques and their validity, tested the report, with the assistance of a DCAA auditor. He was satisfied with the accuracy of the report.

In connection with this study, GE had infrared photographs made to identify alterations. While the alterations on most of the sample of 9100 time records selected

by the US were readable, GE tested approximately 550 by infrared photography to insure that all time records that had alterations masking the original entry were considered. In our previous Order we suggested that Gravitt explore in discovery who performed the infrared tests and by what means the US ver[i]fied them. Submissions to the Court reveal that the infrared work was performed by three organizations: The GE Corporate Research & Development Center in Schenectady, New York; Tytell Laboratories in New York City; and Albert Lyter in Raleigh, North Carolina, using the facilities of the North Carolina State Police. Agent Ryan personally reviewed the infrared photographs and determined the records were authentic. Justice Department Attorney Terlep, who is familiar with infrared photography, also reviewed a number of the photographs and satisfied himself as to their authenticity. Agent Ryan explained that he saw no need for the government to duplicate this analysis because it was consistent with the interviews conducted and the visual analysis of the non-obliterated records in demonstrating that the pattern of misvouchering was random. In making this determination, any entries that could not be read were considered as a shift of costs to the government. This approach was reasonable.

After analyzing the time records, the investigators applied the results to the mix of work conducted at DMO. They determined that the pattern of alterations matched the pattern of contract mix at DMO. They conveyed this to GE, which prepared its own study. Gravitt claims that the investigators abandoned their conclusions in the face of untested GE information. However, the evidence before the Court reveals that the GE report was checked for accuracy by reviewing accounting codes and contracts.[4] The investigators found an error in the classification of charges to the 600 accounting series, which had

[4] For a detailed explanation of how this was accomplished see Government's Reply, Doc. 87, pp. 23-24.

been assumed to be a commercial account. It was then discovered that this series was not a commercial account, but an overhead account. This left virtually no accounts assigned to commercial contracts in DMO. Thus, the US concluded that no shifting from commercial accounts to government accounts occurred.

Gravitt also points to hypothetical studies done by investigators early in the investigation that resulted in an estimate of substantial damage to the government as a result of misvouchering at DMO. However, these estimates were based on incorrect assumptions regarding the mix of work at DMO and applied maximum idle time estimates. The facts uncovered later did not support these assumptions. Nevertheless, these hypothetical studies reveal that the investigators aggressively pursued damages, but were willing to change their original assumptions when the facts discovered did not bear them out. This is reasonable procedure.

The Pre-Gravitt Investigation Was Adequately Pursued

In our previous Order we suggested that Gravitt explore through discovery the relationship between the on-site auditors and GE. Since the government contends its auditors were aware of the altered time records before Gravitt filed his complaint, we suggested Gravitt explore why no criminal investigation or civil action was undertaken until after this case was filed.

The US claims that the original investigation by DCAA, like the instant one, resulted in finding an undercharge to the government. There was no referral to the Justice Department because there was no evidence of intent to defraud the US. Since DCAA does not have authority to impose penalties, further admin[i]strative action was unnecessary. Gravitt has implied collusion in the original audit by DCAA. However, he has produced

no facts to support that claim. To the contrary, the facts support the government's explanation. DCAA does not have authority to administer or terminate contracts, or make related determinations. That is the role of the Contracting Officer. DCAA performs an audit function. Its auditors rotate through companies and their personal success depends on the accuracy of their audit work, not whether they please contractors. Having given Gravitt authority to explore in discovery the relationship between the on-site auditors and GE, we find nothing in that relationship to support a claim of impropriety on the part of the auditors. Their actions were reasonable under the circumstances.

Gravitt's further claim that DCAA is unable or unwilling to supervise and sanction GE is not relevant to the scope of this inquiry. Suffice it to say DCAA's duties do not encompass either supervising or sanctioning GE.

The US Conducted A Thorough Civil Investigation

Gravitt alleges that the investigation was criminal only and is therefore inadequate for the purposes of a civil case. This is specious. Agent Ryan was supervised by several attorneys experienced in civil fraud matters. It was clearly a joint civil-criminal investigation. The issues in each type of case were virtually iden[t]ical—the US had to prove intent to defraud by GE in order to prevail. In the criminal case it had to be proven beyond a reasonable doubt, while in the civil case it had to be proven by clear, unequivocal and convincing evidence. In addition, damage to the government had to be proven to prevail in the civil case. The real significance of the joint criminal investigation is that the US had the unusual advantage of evidence obtained through criminal investigative techniques, such as the Grand Jury, and *ex parte* interviews of prospective witnesses by highly

skilled investigators. Therefore the fact that a criminal investigation also took place does not detract from, but rather enhances the completeness of the civil investigation.

Further Investigation Was Not Necessary

Gravitt alleges that further investigation and more careful techniques could have produced additional evidence. For example, he claims the US should have made efforts to develop a case involving individuals above the level of William Taylor, a supervisor. He criticizes the US for not granting immunity to Taylor after he invoked his Fifth Amendment rights during his depos[i]tion. There was no reasonable basis to believe individuals above the level of Taylor were involved, since the motive was to make DMO appear more efficient to higher placed GE officials. If the US had been knowingly overcharged, GE would be liable whether or not Taylor's superiors knew. As for the grant of immunity, that is not a proper action in a civil case. The criminal investigation was closed long before Gravitt deposed Taylor. Further, such a grant is in the sole discretion of the Attorney General and upon approval by the District Court.

Although there are other actions the investigators could have taken, it was not reasonable to pursue this case further. Gravitt fails to realize that many such investigations take place constantly in this District and others, that limited manpower and resources are available, and that such investigations are funded by the taxpayers of this country. This is not a private civil case where counsel can pursue a fishing expedition so long as his client can afford it. The government investigators and attorneys have a responsibility to the taxpayers to expend only the time and effort that is reasonably justified by the circumstances. In this case, they fulfilled that responsibility.

There Is No Evidence Of Collusion

This matter was originally referred to the Magistrate to investigate the fairness of the settlement because Gravitt implied collusion between the Department of Justice and GE in settling the case. After careful review of all the briefs, depositions and exhibits submitted, we can find no evidence of collusion. The investigation was conducted by four experienced Justice Department attorneys, three experienced Special Agents of the FBI, Air Force OSI investigators and DCAA auditors.

Assistant U.S. Attorney Tracy, in charge of the criminal investigation, is known to the Court as an attorney with extensive experience in criminal fraud investigations. Former Assistant U.S. Attorney Whitacre, then in charge of the civil division of the U.S. Attorney's Office, and former Assistant U.S. Attorney Cruze, both of whom supervised the civil investigation, are known to the Court as attorneys with extensive experience in civil cases, including fraud investigations. Justice Department Attorney Terlep, who participated in the investigation and agreed with the recommendation for settlement, has litigated False Claims Act cases for 10 years and has expertise in *qui tam* matters.

John Ryan, who coordinated the investigation, has been an FBI Special Agent for 21 years. Most of his career has been spent investigating economic white collar crimes similar to those alleged in this case. He has participated in cases involving detailed analysis of thousands of documents and has testified in numerous trials. Ryan testified that this was an important case, because if the government could establish fraud and successfully prosecute G.E., a nationally-known corporation, it would result in substantial publicity, which has a deterrent effect. He stated that, as the investigation progressed, the investigative team could not find the facts needed to establish intent to defraud. Ryan stated, "If you find a viable,

prosecutable case, you pursue it with vigor. If you don't, you can't. You still pursue all logical avenues until you are convinced that there is no reason to continue on with the investigation because there is no case there, and that's what happened in this case." (Ryan Depo., p. 118).

Ryan felt the investigation was very complete. Based upon the results of his investigation as well as information gleaned from a Grand Jury investigation, "I am convinced, absolutely convinced, and the more I reviewed these facts over the past weeks in preparation for this deposition, I am convinced there was never ever a criminal case. There never was any intent to defraud the United States Government and I am convinced from talking to the DCAA people, who during the past week prepared and analyzed the records, and labor vouchers that there was an underbilling." (Ryan Depo., p. 114). Although Ryan referred to criminal intent in his deposition, it was necessary for the government to prove the same intent—intent to defraud—by clear, unequivocal and convincing evidence in order to prevail in the civil case. When government counsel asked for his advice on the civil settlement proposal, Ryan stated he felt it was more than fair, because there was no major "dollar impact" on the government and because there was no intent to defraud. (Ryan Depo., p. 112).

In this case an adequate investigation resulted in facts which led government counsel to the only reasonable conclusion—there was no intent to defraud the US and no damage to the US. It was not necessary to determine each and every instance of misvouchering to make this determination, as it might have been if one were attempting to determine the amount of damage to GE. The employees who falsified vouchers did have an intent to defraud—but it was an intent to defraud GE, not the US. The False Claims Act does not provide a cause of action for the government to pursue damages caused to a pri-

vate contractor by the fraudulent acts of its own employees.

The US properly pursued the forfeiture penalties under the Act, because these penalties are intended to help the US recoup the cost of this investigation, even though the US was not damaged. *Toepleman*, 263 F.2d at 699.

ANALYSIS OF FACTORS FOR DETERMINING REASONABLENESS OF SETTLEMENT

1) THE LIKELIHOOD OF SUCCESS ON THE MERITS BALANCED AGAINST THE RELIEF OFFERED BY THE PROPOSED SETTLEMENT.

There was little likelihood of success on the merits of this case. There was no evidence to prove intent to defraud the US. Rather, the evidence indicated an intent on the part of GE employees to decieve [sic] GE. The proposed settlement permits the US to recover the statutory penalty for the highest number of false claims discovered during the investigation, even though the net result was no damage to the US. This will enable the US to recoup the costs of its lengthy investigation.

2) THE COMPLEXITY, EXPENSE, AND LIKELY DURATION OF THIS LITIGATION.

This is a complex case, involving thousands of documents. Review of the fairness of settlement alone has taken many hours. The litigation of this case would be very expensive and probably would last several weeks.

3) THE STAGE OF THE PROCEEDINGS AND THE AMOUNT OF DISCOVERY COMPLETED.

Settlement was proposed at the time a final pretrial conference was scheduled, after the conclusion of both a criminal and civil investigation and review by local Assistant United States Attorneys as well as Justice De-

partment attorneys, all of whom were experienced in civil fraud cases.

4) THE OPINIONS OF COUNSEL.

Counsel on both sides of the case believe the proposed settlement is reasonable, as does the FBI Special Agent in charge of the investigation. The Intervenor does not believe the proposed settlement is reasonable.

5) COLLUSION AND LACK OF ARMS-LENGTH NEGOTIATIONS.

There is no evidence of collusion. Although GE cooperated fully with federal investigators, there is no indication that dealings between the parties were anything but arms-length. GE should not be criti[ci]zed because it cooperated with the government—it should be congratulated for its attitude.

6) OBJECTIONS TO THE SETTLEMENT.

Objections to the settlement made by Intervenor Gravitt, as well as questions raised by the Special Master, are set out in detail above. All objections have been carefully reviewed and resolved in favor of the settlement.

7) PUBLIC INTEREST.

No public interest would be served by refusing to accept the proposed settlement. The result of such action would be spending substantial amounts of the taxpayer's funds on litigation that is highly unlikely to produce as satisfactory a result for the US as does the proposed settlement. On the other hand, the proposed settlement is in the public interest because it would allow the US to recoup the costs of its investigation, and it would act as a deterrent measure, encouraging GE and other government contractors to more carefully supervise employees responsible for vouchering, or face forfeiture penalties even though the US suffered no damage. Government

representatives, well aware of the misvouchering problems at GE, are following these matters through audit and contract supervision.

CONCLUSION

After considering the detailed proffers of all the parties, after authorizing discovery by Intervenor and suggesting additional issues that Intervenor pursue, and after reviewing the post-discovery briefs of the parties, depos[i]tions of witnesses, and all of the documents submitted, it is our conclusion that the US diligently investigated the violation alleged by Gravitt, and that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

IT IS THEREFORE RECOMMENDED THAT

The settlement of this action be approved.

Date: 8-24-87 /s/ Robert A. Steinberg
ROBERT A. STEINBERG
United States Magistrate

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 86-8301, 86-8302, 86-8303

UNITED STATES, *ex rel.*,
JOHN MICHAEL GRAVITT,
Petitioners,
Cross-Respondents,

v.

GENERAL ELECTRIC COMPANY,
Respondent,
Cross-Petitioner.

[Filed Feb. 7, 1986]

ORDER

BEFORE: KEITH, MARTIN, and KRUPANSKY, Circuit Judges.

The United States ("the government"), General Electric Co. ("GE") and qui tam plaintiff John Gravitt filed separate petitions in a defense contractor fraud suit for permission to appeal the district court's order of January 8, 1986. The order rejected a stipulation of dismissal between the government and GE, whereby GE would pay $234,000 for 117 violations of the False Claims Act, 31 U.S.C. § 3729 et seq.

Upon review of the petitions, the Court concludes that interlocutory appeal under 28 U.S.C. § 1292(b) is not

appropriate. *In re April 1977 Grand Jury Subpoenas*, 584 F.2d 1366, 1369 (6th Cir. 1978) (en banc); *Cardwell v. Chesapeake & O. R.R. Co.*, 504 F.2d 444, 446 (6th Cir. 1974). Accordingly,

It is ORDERED that the petitions for permission to appeal under 28 U.S.C. § 1292(b) are denied.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil No. C-1-84-1610

JOHN GRAVITT, *et al.*,
Plaintiffs,

v.

GENERAL ELECTRIC COMPANY,
Defendant.

[Filed Jan. 9, 1986]

ORDER

This matter is before the Court for consideration of a Stipulation of Dismissal signed by an Assistant United States Attorney for the Southern District of Ohio and by counsel for The General Electric Company. This is a matter that was initially brought pursuant to 31 U.S.C. § 3729. John Michael Gravitt, a former employee of the General Electric Company at Ev[e]ndale, Ohio brought action pursuant to the False Claims Act, 31 U.S.C. § 3730. Mr. Gravitt contended that the United States was overcharged by General Electric Company. Mr. Gravitt brought his action on November 26, 1984. On December 18, 1984 the United States entered its appearance in accordance with Subsection (B)(3) of 31 U.S.C. § 3730.

There was attached to the Stipulation of Dismissal submitted to the Court on December 13, 1985 a Settlement Agreement wherein General Electric agreed to pay the sum of $234,000.00. Counsel for Mr. Gravitt asserts that such settlement is grossly inadequate and suggests that

appropriate settlement would be in the neighborhood of $24,000,000.00. It is the position of the United States that this Court has no jurisdiction since Subsection (B)(4) removes Mr. Gravitt as a party in interest.

An examination of 31 U.S.C. § 3730 reveals an ambiguity which this Court is unable to resolve. Subsection (B)(1) provides for the bringing of a civil action by any individual in any District Court of the United States and provides specifically: "An action may be dismissed only if the Court and the Attorney General give written consent and their reasons for consenting."

Subsection (B)(4) provides: "Unless the Government proceeds with the action the Court shall dismiss an action brought by the person on discovering the action is based on evidence or information the Government had when the action was brought."

This Court is now faced with a dilemma. If the interpretation by the United States of Subsection (B)(4) is correct, this matter must be dismissed since there is evidence that John Michael Gravitt did provide the evidence or information upon which the Government has acted.

On the other hand, if this Court has jurisdiction under Subsection (B)(1) the requirement of consent must imply informed consent and that is totally lacking. The Court has no information at this time to decide that question.

If the jurisdictional question is disposed of, this Court proposes to appoint a Special Master who will conduct thorough evidentiary hearings to determine whether or not the proposed settlement is adequate. In the absence of a determination of such jurisdictional question, the time and expense to the parties and to a Special Master might be expended uselessly.

Accordingly, the Stipulation of Dismissal (Doc. 26) is hereby set aside. The Court finds that this is not an appealable order pursuant to 28 U.S.C. § 1292(B).

The Court is further of the opinion that this Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal therefrom would materially advance the ultimate termination of this litigation.

The Court urges the parties to apply to the United States Court of Appeals for the Sixth Circuit for permission to appeal from this Order.

IT IS SO ORDERED.

/s/ Carl B. Rubin
CARL B. RUBIN
Chief Judge
United States District Court

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil No. C-1-84-1610

JOHN GRAVITT, *et al.*,
Plaintiffs,

v.

GENERAL ELECTRIC COMPANY,
Defendant.

[Filed Feb. 27, 1986]

ORDER

This matter is before the Court under the following circumstances: On December 13, 1985 a hearing was held at which arguments regarding this Court's jurisdiction were presented. Pursuant to such hearing this Court determined that it had jurisdiction and that a proposed settlement of this matter was unfair. On January 8, 1986 this Court declined to approve the settlement offered and urged the parties to appeal such Order to the United States Court of Appeals for the Sixth Circuit (Doc. 27).

On February 7, 1986 the United States Court of Appeals declined to consider the parties separate petitions for permission to appeal and returned this matter to the District Court (Doc. 29). In accordance with the fore-

going the Court determines that it has jurisdiction to consider the fairness of the proposed settlement and to conduct an inquiry therein. The Court does designate United States Magistrate Robert A. Steinberg as a special master pursuant to Rule 53, Fed. R. Civ. P., and does direct him to conduct such inquiry as he may deem appropriate including by way of example only, conduct hearings, examine documents, take testimony of witnesses and to do all other things he deems necessary in order that he might issue a Report and Recommendation to this Court on such proposed settlement.

IT IS SO ORDERED.

/s/ Carl B. Rubin
CARL B. RUBIN
Chief Judge
United States District Court

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil No. C-1-84-1610

JOHN MICHAEL GRAVITT
BRINGING THIS ACTION ON BEHALF
OF THE UNITED STATES GOVERNMENT,
Plaintiff,

v.

GENERAL ELECTRIC COMPANY,
Defendant.

[Filed May 6, 1986]

ORDER

This matter is before the Court on Qui Tam plaintiff Gravitt's Motion to Intervene (doc. no. 33), which is opposed to by the Government in its Motion for Reconsideration of the Magistrate's Order (doc. no. 36).

Upon consideration of all relevant information before it, the Court holds that Qui Tam plaintiff Gravitt has the right to intervene in all matters germane to this action.

This case is hereby remanded to the United States Magistrate for further proceedings in accordance with this Court's Order of February 27, 1986 (doc. no. 31).

IT IS SO ORDERED.

/s/ Carl B. Rubin
CARL B. RUBIN
Chief Judge
United States District Court

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil No. C-1-84-1610

JOHN M. GRAVITT, *et al.*
Plaintiffs,

v.

GENERAL ELECTRIC COMPANY,
Defendant.

AFFIDAVIT OF PAUL DONALD LYNCH

I, Paul Donald Lynch, do state under oath:

1. During the period May 1982 to April 1985, I was Commander of the Air Force Plant Representative Office (AFPRO) at the General Electric Company's Evendale, Ohio plant.

2. In that capacity, I was responsible for ensuring GE's compliance with cost, schedule and performance standards for all government contracts at the Evendale plant.

3. I supervised a staff of one hundred government employees, whose function it was to track performance on existing contracts and to gather data on standards to be used in negotiating new government contracts with GE.

4. The AFPRO employees work under a separate authority from the Defense Contract Audit Agency.

5. Mr. George Krall, Vice President and General Manager of the General Electric, Aircraft Engine Business Group, Evendale Production Division was the person at

GE with whom I dealt regarding the carrying out of the AFPRO responsibility to oversee contract compliance at GE. In that regard, I had frequent spoken and written communications with Mr. Krall.

6. A recurring topic of our communications was excessive idle time by hourly workers. These abuses included charges of idle time to overhead and charges to direct labor on daily labor vouchers.

There are two basic causes of idle time. The first is simply a worker not working when he should be. The second, is the result of lack of material, equipment, inspectors or other resources under the control of the company. The second is properly charged as overhead (paid in part by the government), but excessive amounts reflect a lack of effective production control.

In many cases it was clear that the idle time was the result of poor work ethic; in others it was difficult to determine the cause. Since both types of idle time were the responsibility of the company and both resulted in added costs to contracts, I insisted that the company eliminate both.

I repeatedly brought these problems to Mr. Krall's attention during the period of time I served as Commander of AFPRO at GE, Evendale. (See letters to George Krall dated March 6 and December 17, 1984—Exhibits 1 and 2). I made many inspections of the plant including the DMO shop. On some occasions, I was accompanied during my inspections by George Krall.

As was my practice, I informed my superiors of my findings. I also informed the negotiators for the government agencies buying from GE Evendale. These findings were, in fact, used by them and by me in negotiating contracts with GE Evendale.

7. My concern for the abuse of idle time and allegations of misvouchering led me to have a formal "idle

time" study done in a part of the plant known as Comp[o]nents Manufacturing. While DMO was not a part of Comp[o]nents Manufacturing in 1984, I believe the results of the study are typical of other parts of the plant, including DMO. (See Exhibit 3—Survey of Worker Productivity in Comp[o]nents Manufacturing dated March 6, 1984). I informed GE of my findings by letter dated March 28, 1984 (Exhibit 4). I also informed my superiors of my findings. (See buckslip to General Stukel and reply from General Stukel—Exhibits 5 and 6).

In addition, I distributed the results of my idle time findings to the negotiators for the government agencies buying from GE Evendale. (See distribution instructions on letter dated March 28, 1984—Exhibit 4, and Memorandum dated August 22, 1984—Exhibit 7). The findings were in fact used by them in negotiating contracts with GE Evendale. (See Memoranda from the Department of the Navy dated September 25, 1984—Exhibit 8, and from the Department of the Air Force dated October 19, 1984, —Exhibit 9).

8. In addition to providing my findings to government contract negotiators, I personally briefed the Commanders of the main buving agencies at the San Antonio Air Logistics Center, Oklah[o]ma City Air Logistics Center and the Aeronautical System Division at Wright Patterson Air Force Base, Dayton, Ohio. I briefed these Commanders and negotiators about every quarter so that they would be aware of issues relevant to the negotiations, including labor problems and idle time.

Therefore, the government negotiators were prepared with their own views of the problem of idle time and did not need to accept GE's idle time/productivity figures during negotiations involving direct labor or overhead expenses.

I also took an active role in negotiating overhead rates on government contracts at the GE Evendale plant.

9. I was aware that during 1983 DCAA initiated an audit regarding suspected misvouchering problems in engineering. This audit failed to substantiate the allegations. (See letter dated January 9, 1984 with attached appendices—Exhibit 10). The engineering audit was conducted prior to the letter by Mr. Gravitt to Brian Rowe. In addition, my superiors and I were aware, during 1983, the GE had conducted its own internal audit of Mr. Gravitt's allegations that costs were being shifted from commercial contracts to government contracts in DMO. (See Exhibit 10 and letters from GE to Col. Lynch dated November 2, 1983 and November 16, 1983—Exhibits 11 and 12). I was advised th[a]t GE's internal audit showed that misvouchering had occur[r]ed. Based upon interviews, the reason for the misvouchering was determined to be a desire to meet internal cost and efficiency measurements within DMO. The auditors determined that the misvouchering had resulted in a net underbilling to the government. GE implemented measures to safeguard the integrity of the labor vouchering system as a result of the audit findings. (See letter from GE to Col. Lynch dated November 21, 1983—Exhibit 13, and letter and attachment from GE to General Stukel dated December 5, 1983—Exhibit 14). I was also aware that DCAA had reviewed and ultimately concurred in GE's findings that the result of misvouchering was an underbilling to the government on the contracts involved. (Exhibit 10). I had been routinely apprised of the audits during 1983 by Mr. Robert Einfalt, Resident Auditor, DCAA.

10. As the preceding paragraphs demonstrated, I was aware of the practice of misvouchering idle time at the GE plant in general, and in DMO specifically, long before October 1984 when Mr. Gravitt filed his lawsuit. I also made my findings known to GE and to the government negotiators on a regular basis.

11. I first learned of Mr. Gravitt's allegations concerning the transfer of labor charges from one job to

another in the summer of 1983. I was told about Mr. Gravitt's letter to Brian Rowe by George Krall at that time. As soon as I learned of this allegation, I notified my Commander, General Stukel. I also discussed the matter with a representative of DCAA, who, as I recall, was already aware of the allegation. I also advised Mr. Jack Spellman, Primary Administrative Contract Officer, who oversees and makes the final decisions for the government on all government contracts negotiated at the GE Evendale plant.

12. I first saw a copy of Mr. Gravitt's June 26, 1983 letter to Brian Rowe shortly after he filed his lawsuit in October 1984. At that time, I requested and obtained a copy from Brian Rowe.

13. Although I received the letter in October of 1984, I was already aware of the allegations contained therein as a result of my discussions with George Krall and Robert Einfalt during 1983. As I stated above, I had been aware of the facts giving rise to Mr. Gravitt's idle time and idleness misvouchering allegations since May 1982, when I took responsibility for contract compliance at the GE Evendale plant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 14 April 1986.

/s/ Paul Donald Lynch
PAUL DONALD LYNCH

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On April 14, 1986, before me the undersigned, a Notary Public for the State of California, personally appeared Paul Donald Lynch, personally known by me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed it.

/s/ Joyce F. Jensen
JOYCE F. JENSEN
Notary Public

APPENDIX I

SETTLEMENT AGREEMENT

This agreement is entered into between the United States of America, acting through the United States Department of Justice and the General Electric Company (General Electric), to settle certain civil claims arising out of certain contracts with agencies of the United States to produce aircraft engines, parts and accessories. A list of the contracts relevant to this agreement is appended hereto as Exhibit A. This agreement is entered into in light of the following facts:

1. On or about October 26, 1984, John M. Gravitt, a former employee of the General Electric Company, Aircraft Engine Business Group, Evendale Plant, Evendale, Ohio, instituted a civil action under the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730. In his complaint Gravitt alleged that, at least during his period of employment, from June 23, 1980 until June 30, 1983, and perhaps longer, certain employees of a shop within the plant known as Development Manufacturing Operation (DMO), under instructions from their supervisors, had engaged in a scheme to falsify labor vouchers so as to divert charges for labor away from commercial contracts, and to charge that labor to the account of various Government contracts. Gravitt also alleged that charges for idle time which should properly have been applied to overhead were applied instead to Government contracts. Gravitt alleged that the Government suffered monetary damage as a result of the scheme.

2. On or about December 18, 1984, The United States entered its appearance in Mr. Gravitt's *qui tam* action, and took over its prosecution.

3. General Electric denies the allegations in Gravitt's complaint and affirmatively represents that the allocation of time charges described in the complaint and in Mr.

Gravitt's statement attached to the complaint were random in nature, not intended to cause financial loss to the United States, but instead appeared to be designed to meet internal production budgets and, in fact, its monthly billings to the Government on the contracts involved, resulted in net undercharges to the United States.

4. The United States and General Electric now mutually desire to reach a settlement of this matter without further litigation.

5. The parties acknowledge that the questions of the necessity of the Court's consent to this agreement and of Gravitt's status as a proper relator and of his compensation are now pending before the court.

NOW THEREFORE, in consideration of the mutual promises made herein, it is hereby agreed as follows:

A. General Electric agrees to pay $234,000 in settlement of the claims alleged in the complaint referred to above and as further defined in this agreement. Payment shall be made to the United States within five days after all judicial proceedings pertaining to the approval of this settlement have concluded, including the exhaustion of all appeals. If, after all judicial proceedings pertaining to the approval of this settlement agreement, including the exhaustion of all appellate review relating to that issue, this settlement agreement has been disapproved, or if, prior to the exhaustion of any appeal on the matter of the approval of this settlement, General Electric is required to go forward with a trial on the merits of this case, this settlement agreement shall be null and void. Any amounts ordered by the Court to be paid out of the proceeds of this settlement to Mr. Gravitt shall be the responsibility of the United States.

B. The United States agrees that in consideration for its receipt of the aforementioned payment by General Electric it will never assert any claim, adjustment, or setoff, or institute any civil action against General Elec-

tric Company, or its present or former officers or employees which is based, in whole or in part, upon the transfer of labor costs or charges between and among the contracts listed in Exhibit A, or between and among various accounts within those contracts, by employees of the DMO shop in its Evendale plant during the period from June 23, 1980 through December 31, 1983, except that the United States expressly reserves all rights and actions, claims and demands, either in contract, tort, or for delivery of any deficient or defective products, or for liability under any express or implied product liability warranties pertinent to any contracts which are the subject of this agreement, or for any other claims arising out of any of the contracts which are the subject of this agreement, which are not based upon the transfer of labor costs or charges between and among the contracts listed on Exhibit A, or between and among various accounts within those contracts, by employees of the DMO shop at the Evendale plant during the period from June 23, 1980 through December 31, 1983. Moreover, this agreement does not settle claims, if any, arising under the Internal Revenue laws, Title 26, United States Code. Likewise, this agreement does not settle any administrative matter relating to the suspension or debarment of General Electric or any of its affiliates, or any of its officers or employees, pursuant to Subpart 9.4 of the Federal Acquisition Regulations.

C. General Electric agrees that it will never assert any claim, adjustment, or set off, or institute any civil action against the United States which is based on underpayments to General Electric resulting from the transfer of labor costs and charges between and among the contracts listed in Exhibit A, or between and among various accounts within those contracts, by employees of the DMO shop at its Evendale plant during the period June 23, 1980 through December 31, 1983, and General Electric hereby waives any such claim.

D. General Electric agrees that it will not seek reimbursement from the Government, either directly or indirectly, for the amounts paid pursuant to this settlement agreement, or for its costs of investigation of this matter, including attorneys fees.

E. The United States agrees that it will not seek reimbursement from General Electric, either directly or indirectly, for its costs of investigation for this matter, including attorneys fees.

F. In no event are the terms of this agreement intended, nor are they to be construed by the parties hereto, or anyone, to work a release of liability of or in any way create a benefit in favor of any individual, corporation, or business entity not a party to this agreement.

G. The individual executing this agreement on behalf of General Electric certifies that he has been duly authorized by the corporation to execute this agreement on its behalf, and that he has provided to the United States Department of Justice proof of said authorization.

/s/ Vincent B. Terlep, Jr.
VINCENT B. TERLEP, JR.
Attorney for the
United States

Dated: December 13, 1985

/s/ Harry C. Stonecipher
H. C. STONECIPHER
Vice President & General
Manager, Evendale Aircraft
Engine Product Operations
General Electric Company

Date: December 13, 1985

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil No. C-1-84-1610

Chief Judge Carl B. Rubin

JOHN MICHAEL GRAVITT,
Bringing This Action On Behalf Of The
United States Government,
Plaintiff,

v.

GENERAL ELECTRIC COMPANY,
Defendant.

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii) the parties having settled this matter hereby stipulate that it is dismissed with prejudice.

UNITED STATES OF AMERICA

By: /s/ John J. Cruze
JOHN J. CRUZE
Assistant U.S. Attorney

GENERAL ELECTRIC COMPANY

By: /s/ George J. Moscarino
by Stephen J. Brogan
GEORGE J. MOSCARINO

APPENDIX K

SUBSIDIARIES AND AFFILIATES OF THE GENERAL ELECTRIC COMPANY THAT ARE NOT WHOLLY-OWNED

Argentina

Osram Argentina Sociedad Anonima Comercial e Industrial; Medidores Argentinos, S.A.

Brazil

COPLEN S.A. Industria e Commercio; Banco Brasileiro de Investimentos Ipiranga S.A.

Canada

Camco Inc.; Corod Industries Ltd.; General Electric Canada Inc.; Valmet-Dominion, Inc.

Chile

Electromat S.A.

China

The China Car and Foundry Company Limited

France

CFM International, S.A.; Fabrications Mecaniques de l'Atlantique S.A.; Prodis, S.A.; SNEF Electro Mecanique (S.E.M.)

Germany

Westdeutsche Quarzschmelze GmbH

India

Intersil (India) Limited; Elpro International Limited; IGE (India) Limited

Iran

Iran Electrical and Mechanical Services Company

Italy

CGE-Compagnia Generale di Elettricita S.p.A.; CGE-Compagnia Generale Elettromeccanica S.p.A.; Societa Nazionale delle Officine di Savigliano S.p.A.; Turbomotori Internazionale S.p.A.

Japan

Yokogawa Medical Systems, Ltd.; Asahi Diamond Industrial Company, Limited; Koyo Electronics Industries Co. Ltd.; Shinano Tokki Corporation; Toshiba Corporation; C&C International, Ltd.; Drive System Company, Ltd.; Engineering Plastics, Ltd.; Eye Lighting Systems Corporation; Fanuc GE Automation Asia, Ltd.; GEM Chemicals, Ltd.; GEM Polymers Ltd.; Information Services International-Dentsu Ltd.; Japan Nuclear Fuel Company, Limited; Toshiba Electronic Systems Co. Ltd.; Toshiba Silicone Company, Ltd.

Korea

Korean Industrial Motor Company, Ltd.; Daewoo Electric Motor Industries, Ltd.; Samsung Medical Systems

Luxemburg

GE Fanuc Automation Europe S.A.

Mexico

Brelec, S.A. de C.V.; Diesel Industrial y Tractiva S.A. de C.V.; Enseres Electroindustriales, S.S. de C.V.; Grupo Numasa, S.A. de C.V.; Medidores Electromecanicos, S.A. de C.V.; Tragess, S.A. de C.V.; Ultrapol, S.A. de C.V.

Netherlands

GE (USA) Semiconductor B.V.

New Zealand

Donald Brown & Co. Ltd.

Nigeria

American General Electric (Nigeria) Ltd.; IGE of Nigeria Ltd.

Norway

Kvaerner-Calma A/S; A/S Medirad

Philippines

Philacor Realty and Development Corporation; Philippine Appliance Corporation; Philippine Glass Bulbs, Inc.; Philippine Electric Corporation; Pinagkaisa Realty Corporation; Philippine Electrical Manufacturing Company

Saudi Arabia

Middle East Engineering Limited Saudi Arabia; Jamjoom Electrical Distribution Assemblies Company Ltd.; Saudi American General Electric Company Limited

Singapore

Intersil Singapore (Pte.) Limited; Watt & Akkermans Pte. Ltd.

Spain

Construcciones Industriales de Maquinaria e Ingenieria, S.A.; General Electric (USA) Electromedicina, S.A.

Taiwan

Taian Electric Manufacturing Company; United Asia Electric Company

Turkey

TUSAS Motor Sanayii A.S.; General Electrik Turk Anonim Sirketi; TUSAS Aerospace Sanayii A.S.

United States

GE Fanuc Automation North America, Inc.; Springer Mining Company; A.P.—GERECCO Ltd.; Airport Tech Center Associates; Amwest Associates; Arvada-Fremont Developers; Ashley Run Associates; Atrium V Joint Venture; Azdel, Inc.; BMW Credit Corporation; Baconsfield Associates II; Bayou Cogeneration Plant; Bayou Partners Limited; Blue Water; Brandemere Associates I; Brandemere Associates II; CBI Nuclear Company; Century II; CFM International, Inc.; Cardinal Cogen; Center for Advanced Television Studies; Center Stage I Associates; CFC/GECC (New York) Associates II; Cogen Technologies NJ Venture; Coherent General, Inc.; Cool Water Coal Gasification Program; Council Crossing; Dakalb Properties; Diamond Oaks Associates; Dobson Village I Associates; Earth Observation Satellite Company; Eastland; Ebbert's Homes VI; Ebbert's Homes VII; Equipment Financing Associates; Executive Center West Associates; FGIC Corporation; Financo Investors Fund L.P.; Financo Investors Management Partnership L.P.; GECC/GFC (New York) Associates I; GE Credit Auto Resales Services; GE Fanuc Automation Corporation; Gleneagle Associates; Half Dan-Ditlev Simonson; Hearts/ABC-RCTV; High Voltage Breakers, Inc.; Holiday Pines; Holiday Pines Service Corporation; Huntington Apartments; Huntsman; Hydraulic Turbines, Inc.; Keegan Road Associates; Kirby Fletcher Stamford, Ltd.; Kramer Capital Corporation; LCSSC Venture; Lincoln Mesa II

Associates; Locke Insulators, Inc.; MVPPP—Mount Vernon Phenol Plant Partnership; Millicent Way Associates; Mint-Pac Technologies, Inc.; Mira Mesa R&D Associates; National Cash Register; Northchase One Associates; Northchase Two Associates; Northern Oaks Associates; Northern Telecom/General Electric Credit Associates; Northridge Pointe Associates; Oak Hollow II Associates; Otisca Industries, Limited; Ozona Development Drilling Partnership I; Ozona Development Drilling Partnership II; Ozona Development Drilling Partnership III; Park Place Developers, Ltd.; Pathfinder Mines Corporation; Patrick Petroleum Corporation Drilling Program No. 1; Patrick Petroleum Corporation South Louisiana Five Well Investment Package; Pear Tree Joint Venture; Pellicano Business Center Associates; Plum Tree Dallas Associates, Ltd.; Powers Pointe Associates; PTF/GECC Associates I; Pylon; Racom Corporation; Regency Park Associates; Renner Plaza Associates; Resurgens Plaza; Ringwood Avenue Joint Venture Assoc.; Rolling Hills Ranch; Sharon Road West Associates; Shinano Tokki General Corporation; SGE (New York) Associates I; SGE (New York) Associates II; Summit Oakes Associates; Technology Park; The Settling Associates; Timberglen Associates; VHD Electronics, Inc.; Wainoco Appalachian Stamford, Ltd.; Watkins Equity Leasing; Wiles Associates; American Oil and Gas Corporation; Guinness Peat Aviation, Ltd.; Lodgistix, Inc.; Marquette Electronics, Inc.; Medical Ventures, Inc.; Microelectronics and Computer Technology Operation; Movid Information Technology, Inc.; Semiconductor Research Center; Solomon Design Automation Systems; Star Technologies, Inc.; Structural Dynamics Research Corporation; Vicom Systems, Inc.

Uruguay

General Electric de Uruguay S.A.

Venezuela

Industrias Electronicas S.A.; Turbinas y Mecanica C.A.; Manufacturers de Aparatos Domesticos, S.A.; Venezolana de Compresores y Motores S.A.; Vidriolux, C.A.